

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-003-13-1-5-00136-16
45-003-14-1-5-01211-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-451-007.000-003
Assessment Years: 2013 & 2014

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated a 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 30, 2015. On January 20, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner initiated a 2014 appeal with the PTABOA. The PTABOA issued notice of its final determination on April 12, 2016. On May 27, 2016, Petitioner filed a Form 131 petition with the Board.
3. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
4. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on February 12, 2018. Neither the ALJ nor the Board inspected the property.
5. Petitioner James Nowacki was sworn and testified. Robert W. Metz and Gordana Bauhan, Lake County Appeal Officers, were sworn as witnesses for the Respondent.

Facts

6. The subject property is a vacant residential lot located at 3933 W. 27th Avenue in Gary.
7. The assessed value was \$1,500 for 2013 and 2014.
8. Petitioner requested an assessed value of \$600 for each year.

Record

9. The official record contains the following:

a. A digital recording of the hearing

b. Exhibits:

Petitioner Exhibit 1: GIS map,
Petitioner Exhibit 2: Property record card (“PRC”) 2010-2015,
Petitioner Exhibit 3: PRC 2013-2017

Respondent Exhibit 1: PRC,
Respondent Exhibit 2: Real Property Maintenance Report for 2012,
Respondent Exhibit 3: Real Property Maintenance Report for 2013,
Respondent Exhibit 4: Real Property Maintenance Report for 2014,
Respondent Exhibit 5: Overhead GIS map of the subject property,

Board Exhibit A: Form 131 petitions,
Board Exhibit B: Notices of Hearing,
Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden

10. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that an assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.

11. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

12. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest

assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. Based on the Respondent’s exhibits and undisputed testimony, the assessed value either decreased from 2012 to 2013 or remained the same. Petitioner has the burden of proof for 2013. The burden for 2014 depends on the outcome for 2013 and will be addressed in turn.

Contentions

15. Summary of Petitioner’s case:
 - a. This property is a remnant lot—the State took part of the property when it widened Interstate 80/94. The paved road shown on the property record card is the interstate and there is no access from the interstate. The lot is inaccessible and undevelopable. *Nowacki testimony; Pet’r Exs. 1 & 3.*
 - b. Petitioner testified that high assessments in the area drive people from their property and alienate people from having any interest in the property. They have caused this area to be the most blighted area in the city. Petitioner contends the assessments generate fees and job security for the assessor’s staff. *Nowacki testimony.*
 - c. Petitioner contends the assessment is outrageous because it equates to \$12,000 per acre for property that has no utilities, no access, and is undevelopable. Petitioner believes the value should be \$600 which is still 6 times more than he paid for it. *Nowacki testimony.*
 - d. Petitioner testified that the assessed values have fluctuated wildly over the years. In 2010, the property was valued at \$3,400. The assessment is moving in the right direction because now it is valued at \$1,500. *Nowacki testimony; Pet’r Exs. 1 & 2.*
 - e. Petitioner contends there is nothing valid or verifiable in the Respondent’s exhibits. There have been no identifiable sales that support the assessed value the assessor put on the property. The value of the property is a tiny portion of that assessed value when you look at the sales history. Someone will bid a minimum amount for the property or the property will be given to another entity. *Nowacki testimony.*

16. Summary of Respondent's case:
- a. The 2012 assessed value of the property was reduced from \$3,400 to \$1,500 and that value carried forward to 2013 and 2014. These are not wildly fluctuating numbers. *Bauhan testimony; Resp't Ex. 1-4.*
 - b. The PRC reflects the change in the size of the lot and the right-of-way from the interstate. Corresponding influence factors were applied and carried forward. *Bauhan testimony.*

ANALYSIS

17. Petitioner failed to make a prima facie case for a reduction in the assessed values for the 2013 or the 2014 assessment years. The Board reached this decision for the following reasons:
- a. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the property's market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property's market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") will often be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
 - b. Regardless of the method used to prove a true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for each assessment at issue in these appeals was March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. Petitioner presented no probative evidence to support the value he claimed. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 70 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
 - d. Petitioner had the burden of proof for 2013, but he failed to make a prima facie case for a reduction in assessed value. Consequently, Petitioner had the burden of proof

for the 2014 appeal. Petitioner offered the same evidence and arguments for both years and the outcome is the same.

- e. Where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

18. The Board finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 and 2014 values will not be changed.

ISSUED: April 27, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.